News from Ed Markey

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MARKEY INTRODUCES "ACCOUNTABILITY FOR ACCOUNTANTS ACT"

Bill Removes Limits on Ability of Defrauded Investors to Recover Losses Caused by Accounting Firm Fraud

WASHINGTON, D.C. --

Representative Edward J. Markey (D-MA) today introduced legislation aimed at reforming a 1995 law that has made it more difficult for defrauded investors to recover their losses from accounting firms who knowingly or recklessly aided and abetted securities fraud. The bill is being introduced in response to the recent revelations regarding Arthur Anderson's role in the dramatic collapse of Enron Corporation.

"It is outrageous that the same executives who may be responsible for the destruction of workers' pensions are currently protected by Congress when the worker's try to recover their life savings. In 1995, Arthur Anderson and the other big accounting firms succeeded in lobbying Congress to strictly limit their future liability for securities fraud," said Rep. Markey, explaining that, "As a result, Arthur Anderson can no longer be held jointly and severally liable for securities fraud."

Rep. Markey continued, "This ill-advised law has directly contributed to a rising tide of accounting failures, culminating in the Enron-Arthur Anderson fiasco. The types of internal checks and balances that a healthy concern about litigation risk create within each accounting firm have been undermined, and the pressure to look the other way at 'cooked books' of audit clients that also are big clients for consulting and other non-audit services can be intense. The bill I am introducing today will help address this problem."

Rep. Markey's bill, the "Accountability for Accountants Act of 2002" responds to several problems that the Enron/Arthur Anderson case already have raised about fairness of the securities litigation regime created by the Private Securities Litigation Reform Act of 1995, a bill which was enacted as part of the House Republican Contract with America over President Clinton's veto. Rep. Markey was a leading opponent of the 1995 Act. Specifically, the bill Rep. Markey today would reform current law by:

· Restoring plaintiffs ability to seek discovery against accounting firms so that they may gather the information needed to meet the heightened pleading standards created by the 1995 Act. Current law creates a "Catch 22" situation in which plaintiffs must plead with "particularity" the facts giving rise to a strong inference of fraud, but stay the plaintiffs from getting the evidence needed to meet this standard.

· Restoring joint and several liability in cases where: 1) an accounting firm provides both auditing and non-auditing services (such as consulting services) to an issuer; 2) the defendant knowingly committed a violation of the securities laws; 3) an accounting firm failed to comply with the financial fraud reporting provisions of the securities laws; 4) the issuer of the securities that are the subject of the fraud has become insolvent. Prior to enactment of the 1995 Act, accountants like Arthur Anderson could be held

"jointly and severally liable" for securities fraud. This means that if the accountant is found to have knowingly or recklessly allowed the fraud to occur, it could be held fully liable for the full amount lost by investors. Such a standard is particularly important in cases, such as the current Enron situation, in which the company has become insolvent as the result of discovery of the fraud and the accountants and other professionals who facilitated the fraud may be the only entities remaining that the plaintiff can seek recovery from.

· Overturning the Supreme Court's decision in Central Bank v. Denver, which eliminated liability for those who aid and abet a securities fraud. For decades prior to the Court's decision, aiders and abettors had been held liable for their role in enabling a securities fraud, and accounting firms had periodically been found culpable as aiders and abettors, rather than as "primary violators." While Congress restored the SEC's ability to bring cases against aiders and abettors a few years ago, it thus far has failed to do so for defrauded investors seeking to recover their losses.

· Establishing specific statutory requirements that accounting firms retain all documents relating to their audits for a 4-year period, with a criminal penalty of up to 10 years imprisonment for knowingly or willfully destroying documents. The bill would also require the issuer of the securities that is the subject of any shareholder litigation to preserve all records during the pendency of the litigation.

· Requiring each accounting firm to formally consider divestiture of any interests in non-auditing businesses or ceasing providing non-audit services to audit clients, and to report to the SEC on what they have decided to do. The SEC, in turn, would be required to submit a report to the Congress summarizing what actions the accounting industry has taken to address the inherent potential conflicts-of-interest in performing audit and non-audit functions for the same clients.

Rep. Markey concluded, "Most of the people that work at accounting firms are good and honest people who play by the rules. The problem is that the system they work in has created an inverse system of punishment and rewards in which accountants are encouraged to act both as referees and players. We need to change the system, and this bill is a first step in that direction. "

"I intend to follow this bill by working with my colleagues in the House and Senate on additional legislative measures, such as creation of a tough accounting self-regulatory organization, overseen by the SEC - instead of the toothless tiger recently proposed by SEC Chairman Pitt. I also intend to re-introduce my legislation aimed at better regulating currently unregulated derivatives dealers, such as the operated by Enron."

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